

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

FEDERAL TRADE COMMISSION, and
UTAH DIVISION OF CONSUMER
PROTECTION,

Plaintiffs,

vs.

NUDGE, LLC; RESPONSE MARKETING
GROUP, LLC; BUYPD, LLC; BRANDON
B. LEWIS; RYAN C. POELMAN; PHILLIP
W. SMITH; SHAWN L. FINNEGAN;
CLINT R. SANDERSON; DEAN R.
GRAZIOSI; and SCOTT YANCEY,

Defendants.

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION TO EXCLUDE
EXPERT TESTIMONY OF HOWARD
BEALES**

Case No.: 2:19-cv-00867-DBB-DAO

Judge David B. Barlow

Magistrate Judge Daphne A. Oberg

On February 1, 2023, pursuant to the Court's Order Granting [348] Joint Motion To Modify Trial Order dated December 9, 2022 [ECF No. 350], Plaintiffs filed a Motion To Exclude Expert Testimony Of Howard Beales [ECF No. ____] (the "Motion").

The Court, having considered the Motion and the arguments of the parties, and finding good cause, ORDERS as follows:

1. The Motion is GRANTED;
2. Testimony from Dr. J. Howard Beales is not relevant to the issues in dispute and unreliable under *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), and its progeny; and
3. Therefore, testimony from Dr. Beales is excluded from the trial of this matter pursuant to Fed. R. Evid. 401, 402, and 702.

SIGNED this ____ of _____, 2023

BY THE COURT:

David Barlow
United States District Judge